

Application No. 09/740,942
Amendment Dated: May 26, 2004
Reply to Office Action dated March 1, 2004

REMARKS

Objection to the Drawings

The Examiner has objected to the drawings for lacking descriptive labels for Items 22 and 24 in Figure 1. Applicants have added descriptive labels to Items 22 and 24 in Figure 1 in accordance with the specification. No new matter has been entered as a result of these amendments.

Rejection of Claims 1 and 4-5 under 35 USC 102(b)

The Examiner has objected to Claims 1 and 4-5 as being anticipated by Garg et al. (USP 6,327,677). Applicants respectfully disagree.

The method and apparatus of Garg et al. discloses a network-related monitoring system that detects problems or potential problems in a network environment by comparing current network operation and performance data to historical network operation and performance data (see Garg et al. at column 2, lines 38-43). It is clear throughout the disclosure of Garg et al. that the emphasis is on dynamically generating reference data or reducing the dynamic data from the network into static thresholds (see Garg et al. at column 7, lines 47-53). In either situation, the basis for the data and ultimate thresholds are understood to be historical performance of the network and various network devices or applications with the network. Indeed, it is highly illustrative that the terms "historical" and "dynamic" are used thirty-three (33) and twenty-nine (29) times, respectively, to characterize the invention of Garg et al. in their disclosure. Accordingly, Applicants believe that the entire focus of Garg et al. is distinguished from utilizing any fixed or predetermined operational references as thresholds.

In sharp contrast to Garg et al., the present invention makes determinations of problems or potential problems in a network environment based upon a comparison with established parameters. Such established parameters are based on the specifications provided for each given software release (see page 5, lines 19-20 of Applicants' originally filed Specification). Accordingly, the specs of each given software release for the network elements within a network are clearly fixed criteria upon which the established network element operating

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parameters are fixedly based. Indeed, the auditor of the present invention reads the data capture file for a given network element and determines whether the given line read from the data capture file is a valid (i.e., preexisting and fixed) network element command line instruction (see Applicants' Specification at page 6, lines 20-22). The data capture file represents operating parameters of the network element and is further examined to determine whether such operating parameters are within valid (i.e., preexisting and fixed) ranges.

Owing to the fact that predetermined operating parameters are required by the present invention, Applicants' method and apparatus is not subject to the vagaries of network operational fluctuations. This is a significant benefit over the Garg et al. method and apparatus which relies upon active network operational data to generate the historically-based parameters. Such active network operational data can include wide fluctuations that may significantly differ from previous data and thus skew the historically-based parameters. While this is briefly mentioned in the Garg et al. disclosure (see column 7 at lines 31-46, column 11 at lines 36-51, and column 13 at lines 53-67), there is no contemplation given to defining what constitutes a "serious" deviation from normal operation or adequately dealing with such serious deviations. Hence, deviations in active operational parameters inherently contributes to skewing in Garg et al. or any method and apparatus that relies upon a dynamic, historically-based parameter. Applicants' invention is not affected in any way by such network fluctuations as the operating parameters used as references are predetermined (i.e., preexisting and fixed).

In order to clarify the points made above in terms of the now pending claims, Applicants have amended each independent claim to include language which makes it clear that the operational parameters sampled from any given network device are compared against a static reference parameter. More specifically, each independent claim now requires that an operational parameter is determined to be valid or invalid "by comparing the operational parameter with a corresponding **predetermined operational specification** for the given network element" (bolding added for emphasis). Proper support is found at least at page 3, lines 6-8 and page 5, lines 17-20 of Applicants' originally filed Specification. Applicants submit that this is very different from the Garg et al. reference either alone or in combination with any cited reference. The Garg et al. disclosure relies upon historical operation and performance data to generate a reference parameter or thresholds whereas the instant invention relies

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upon each network element's known operational specs that are clearly predetermined as opposed to dynamically generated on a historical basis.

Still further, Applicants' urge the Examiner to consider that the predetermined operational specification for a given network element is clearly differentiated from the dynamic operational parameters of Garg et al. The term "dynamic" is commonly understood as not static, but rather changing over time. In contradistinction, Applicants' claim limitation includes the term "specification" which is commonly understood to involve a measured characteristic of known quantity or predetermined range of a component or performance. In any case, the term "predetermined operational specification" when read in light of Applicants' Specification is respectfully submitted to be very clearly a fixed and known reference point rather than an historically derived dynamic parameter.

Applicants respectfully submit that the present invention defined by independent Claim 1 is not disclosed or suggested in Garg et al. and provides clear and distinct advantages which are not obtained by Garg et al. Accordingly, Applicants respectfully submit that Claim 1 is allowable.

Claims 4 and 5 each depend directly or indirectly from Claim 1 with limitations to the features thereof. As discussed above, Claim 1 is believed to be patentably differentiated from Garg et al. Accordingly, as Claim 1 is believed to be allowable, Claims 4 and 5 properly depending therefrom are also respectfully submitted to be allowable.

Rejection of Claims 2-3, 7-11, and 13-16 under 35 USC 103(a)

The Examiner has rejected Claims 2-3, 7-11, and 13-16 as being obvious by Garg et al. in light of Cutrell et al. (USP 6,141,777). Applicants respectfully disagree.

Applicants incorporate the arguments already made above. As Claim 1 is believed allowable, Claims 2 and 3 properly depending therefrom are also respectfully submitted to be allowable.

As to Claim 7, Applicants submit that the arguments made above in regard to Claim 1 are equally applicable to independent Claims 7 and 13. Specifically, Applicant has amended Claims 7 and 13 to require that an operational parameter is determined to be valid or invalid

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"by comparing each operational parameter with a corresponding predetermined operational specification for the given network element." Applicants submit that this is distinct from the Garg et al. reference either alone or in combination with Cutrell or any cited reference as supported by the aforementioned arguments. Accordingly, Claims 7 and 13 are believed to be allowable, and Claims 8-11 and 14-16 properly depending respectively therefrom are also respectfully submitted to be allowable.

Rejection of Claims 6 and 12 under 35 USC 103(a)

The Examiner has rejected Claims 6 and 12 as being obvious by Garg et al. in light of Wu et al. (USP 5,617,533). Applicants respectfully disagree.

As to Claims 6 and 12, Applicants submit that the arguments made above in regard to Claim 1 are equally applicable to independent Claims 6 and 12. Specifically, Applicant has amended Claims 6 and 12 to require that an operational parameter is determined to be valid or invalid "by comparing each operational parameter with a corresponding predetermined operational specification for the given network element." Applicants submit that this is distinct from the Garg et al. reference either alone or in combination with Wu et al. or any cited reference as supported by the aforementioned arguments. Accordingly, Claims 6 and 12 are respectfully submitted to be allowable.

No fee is believed due for this submission. However, Applicant authorizes the Commissioner to debit any required fee from Deposit Account No. 501593, in the name of Borden Ladner Gervais LLP. The Commissioner is further authorized to debit any additional amount required, and to credit any overpayment to the above-noted deposit account.

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It is submitted that this application is now in condition for allowance, and action to that end is respectfully requested.

Respectfully submitted,

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